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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS.,
Appellants,

versus

CITY OF SHREVEPORT,
Appellee.

Appeal from the Supreme Court of Louisiana.

MARKE E. CHAPMAN,
MRS. RUTH MUIRHEAD,
SAM JONES SMITH,
By their Attorneys,
ROBERT G. CHANDLER,
918 Commercial Building,
Shreveport, Louisiana,
OTIS W. BULLOCK,
506 Commercial Building,
Shreveport, Louisiana.

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Appeal from the Supreme Court of Louisiana.

To the Honorable the Supreme Court of the United States:

Petitioners Marke E. Chapman, Mrs. Ruth Muirhead and Sam Jones Smith, pursuant to Rule 15 of the Rules of this Court, respectfully show:

1.

The opinion rendered in the District Court below has not been yet officially reported (see Record, pp. 17 to 29, Inc.) and the decision of the Supreme Court of Louisiana is reported in *74 Southern (2d) at page 142, et seq.* (Southern Reporter Advance Sheets, September 16, 1954, pp. 142 to 147, Inc.); that copies thereof are annexed hereto pursuant to the provisions of sub-paragraph H of Rule 15 of the Rules of this Court.

2.

Appellants instituted this proceeding in the First Judicial District Court in the State of Louisiana seeking an injunction restraining the City Council of the City of Shreveport from inserting inorganic sodium fluoride in the public water supply of said City on the ground among others that said action would infringe the liberty guaranteed to appellants by the Fourteenth Amendment to the Constitution of the United States; that the State District Court granted the injunction and on appeal the Supreme Court of the State of Louisiana reversed the decision of the District Court, which decision is now sought to be reviewed.

3.

The decision of the Supreme Court of the State of Louisiana herein sought to be reviewed, was rendered on May 31, 1954 (Record, pp. 30 to 35, Inc.). A rehearing was timely applied for and the Supreme Court of Louisiana made its action final by denying the petition for a rehearing on July 2, 1954, (Record, p. 35); that on August 31, 1954 appellants filed their Notice of Appeal in the Supreme Court of Louisiana (Record, p. 63).

4.

That the Supreme Court of the United States has jurisdiction of this case by virtue of the provisions of Section 1257, Title 28, U.S.C.A. in that Resolution No. 262 of 1953 of the City of Shreveport (Record, p. 7) and the action proposed thereunder, if allowed to stand, would infringe the liberty of petitioners guaranteed to them by the Fourteenth Amendment to the Constitution of the United States.

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5.

That the following decisions of this Court support the jurisdiction in this cause: *Breard v. City of Alexandria*, 341 U. S. 622; *Terminiello v. City of Chicago*, 337 U. S. 1; *Jamison v. State of Texas*, 318 U. S. 413; *Jacobson v. Massachusetts*, 197 U. S. 11; *Allgeyer v. State of Louisiana*, 165 U. S. 578, and *Meyer v. State of Nebraska*, 262 U. S. 390.

6.

That this case involves the validity of Resolution No. 262 of 1953 of the City Council of the City of Shreveport, Louisiana, proposing to place inorganic sodium fluoride in the water supply of the City of Shreveport, the text of said resolution being as follows:

> "BE IT RESOLVED, That the City Council of the City of Shreveport, Louisiana, in legal and regular session convened, pursuant to the request of and adoption of a resolution by the following named organizations or societies, to-wit: The Council of Dental Health of the Louisiana State Dental Society, The Council of Dental Health of the Fourth District Dental Association, the Shreveport Medical Society and the City Board of Health of Shreveport, all of which organizations advocate, favor and approve and petition the City Council of the City of Shreveport to fluoridate the city water supply in accordance with the best plans now available.
>
> "THEREFORE, in consideration of these requests, the City Council hereby authorizes the Commissioner of Public Utilities to proceed with

calling for bids on the necessary equipment in accordance with specifications on file in the Department of Water and Sewerage Engineers office, and that the Secretary-Treasurer, J. T. Tanner, be authorized to advertise for same, returnable October 27, 1953, at ten o'clock A. M., at the City Hall; the City reserving the right to reject any and all bids." (Record, p. 7).

7.

The only question presented by this appeal is whether the placing of that drug or chemical known as inorganic fluoride in the community water supply of the City of Shreveport, Louisiana would constitute a violation of the rights guaranteed to the citizens of said City by the Fourteenth Amendment to the United States Constitution, the purpose of the insertion of said drug being for the purpose of reducing incidence of dental caries which is a noncontagious and noninfectious disease.

8.

The case has been heretofore stated in this statement, but the facts material to the consideration of the question presented show that while the preponderance of the evidence indicates the proposed action sought to be prohibited would reduce the incidence of dental caries in children that no clinical tests have been made tending to show its effect on the aged, adult and ill, and that, the matter is still in an experimental stage. (See Report of Select Committee, 82nd Congress, Second Session, Record, pp. 3 to 12, Inc.).

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Appellants claimed the protection of the Fourteenth Amendment in their petition in the State District Court (Record, p. 4), argued the question both orally and in brief in the Louisiana Supreme Court, contending that the ruling of this Court in *Jacobson v. Massachusetts*, 197 U. S. 11, was authority for the proposition that personal liberty of citizens might not be infringed except under pressure of great dangers caused by contagious or infectious diseases, dental caries not being a disease falling in that category. That the Supreme Court of Louisiana denied appellants' claim of protection under the Fourteenth Amendment in the following language:

> "There is no merit in appellees' argument that, if the city charter grants to the city council of Shreveport authority to fluoridate its water supply, such action to that extent is a violation of the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment does not deprive a state or its subdivisions of the right to preserve order or to protect the health of the people under its police power, and in the exercise of its power the legislative branch may interfere with and impair the individual liberty of the citizens in a manner and to an extent reasonably necessary for the public interest, and the courts will not interfere except where the measures invade fundamental rights or are arbitrary, oppressive, or unreasonable. This is not a proper case for judicial interference." (Record, pp. 34 to 35).

9.

Petitioners show that the question presented in this case is substantial because inorganic sodium fluoride is a drug or chemical which might have harmful and deleterious effects upon the citizenship in general, particularly in view of the fact that no clinical tests have been made to determine the effect of said drug upon the aged, adult and ill portions of the population, or upon pregnant women, and for the further reason that eminent and respectable authorities among persons qualified to have an opinion, throughout the United States, feel that the advisability of fluoridation of communal water supplies is still in an experimental stage; that under the circumstances the health and welfare of the entire population of the United States are involved.

Wherefore, petitioners pray that this statement be received and deemed sufficient.

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MRS. RUTH MUIRHEAD,
SAM JONES SMITH,
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APPENDIX A.

Marke E. Chapman, et al.	No. 116,282
v.	First District Court
City of Shreveport	Caddo Parish, Louisiana

OPINION

This case is now before the Court for decision following trial of petitioners' application for a preliminary writ of injunction to prevent the fluoridation of the publicly owned and operated City water supply, which is at present fluorine-free, pursuant to the decision of the City Council so to do. As the first step to effectuate its decision, the Council adopted a resolution authorizing the Commissioner of Public Utilities to proceed with calling for bids for the purchase of the necessary equipment. This suit followed.

Petitioners are residents, citizens, ad valorem taxpayers of the city, and purchasers of water from the City for their use and the use of their families. Petitioners contend that the proposed fluoridation of the public water supply and the expenditure of public funds for such purpose are illegal, null and void; whereas the City asserts the legality and validity of the proposed action.

On the trial of the application the evidence, for the most part, was, by agreement of counsel, adduced in the form of affidavits and statements of witnesses. In addition, the Court admitted, over objection of defendant's counsel, transcript of "Hearings before the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics, House of Representatives, 82nd Congress,

Held in January and February, 1952." Included in this evidence are the scientific opinions and reports of doctors of medicine, dentists, chemists, biochemists, health officials, research engineers, scientists, etc., from this locality and from many other parts of the United States. The result is a voluminous record dealing with involved scientific matters upon which the experts themselves are not in unanimity of view. To all this we have given prolonged consideration and study to the end that we might obtain an understanding of the essential facts necessary to the proper application of the legal principles involved in this controversy.

What is fluoridation? It is the impregnation of the City water supply with fluorine ions, accomplished by the mechanical addition to the water of a suitable and soluble fluorine compound, called a fluoride. Sodium fluoride is the one whose use is contemplated by the City. This is necessary because the element fluorine, when isolated and not in combination, is a gas, highly toxic and corrosive, and reacts violently with water, but when the fluorine exists as ions (as it does in its salts) it is water soluble. These salts, or fluorides (ions of fluorine combined with ions of metals of some kind) occur in nature in varying amounts (almost always in low concentrations). In many areas of the United States, including areas in Colorado, Texas, Arkansas, Ohio, Illinois, and others, the natural water supplies contain varying concentrations of fluoride. The evidence establishes that the fluorine ion is contained in many of the foods which are common to the American diet, notably the vegetables and proteins. The evidence shows that the artificial fluoridation can be effected by

apparatus designed and perfected so as to accomplish with mechanical accuracy the concentration desired.

What is the purpose of artificial fluoridation? We may begin to answer this question by observing what fluoridation is not intended to accomplish. Fluoridation has nothing to do with and bears no relation to the purity, sanitation, or potability of the water. Chlorination is the universally accepted method of sterilization. The reason chlorine is the universally accepted agency for ridding water supplies of impurities, bacteria and other organisms deleterious to health is that it is both effective and safe. Its effectiveness has been demonstrated from long experience and it is accepted by unanimity of scientific opinion to be efficiently destructive of water-borne bacteria and deleterious organisms. It is safe because it accomplishes its purpose in concentrations that are not toxic and because of its fugitive characteristic and tendency to escape and separate from the water after its work is done. Thus it is pointed out in the evidence that the farther away from the point of mixing the water is the less and less the chlorine concentration becomes, so that usually by the time it reaches the consumer's water faucet its presence is not observed. This tendency to escape and separate is accelerated with temperature rise. To the contrary, fluorine is not and cannot be effectively used for the purpose of sterilizing the water, because the amount of fluorine necessary to be added to water for that purpose would result in a highly toxic concentration. Moreover, fluorine does not possess the fugitive characteristic of chlorine. It remains in the water, and a rise in temperature, accelerating evaporation, leaves the fluorine unaffected and increases the

concentration. All the evidence on this point supports the statement from the affidavit of A. A. Hirsch, City Chemist and Water Purification Superintendent for the City of Shreveport, that "Fluorine in any form, either elemental or combined, to affiant's knowledge, has never yet been proposed or contemplated as a sterilizing agent for public water supplies."

The admitted aim of fluoridation is to reduce the number of cases of dental caries, or tooth decay, among the children of the community of the age of approximately 12 years and under, the age span during which dentitions, deciduous and permanent, take place.

At this point some historical information concerning fluoridation is enlightening. Some years ago in certain areas of the United States where the public water supply naturally contained the element fluorine, it was observed that the native population and those who had resided in the areas over long periods of time manifested a phenomenon of "mottling" of the enamel of their teeth. By a process of elimination fluorine was convicted as the offender and this condition received the name "fluorosis" in acknowledgment of its parentage. This mottling was not removable and occurred in various degrees characterized by the scientists as ranging between mild and extreme, producing defects ranging from "cosmetic" in the mild to "functional" in the extreme cases. This condition of fluorosis was observed to be worse in areas having excessive concentration of fluorine in the particular water supply. Resultant studies indicated that these toxic effects of fluorine did not occur, except in minimal amounts, where the fluorine concentration did not exceed approxi-

mately 1 PPM, that is, one part fluorine per million parts of water.

Paradoxically, it was observed by the students of this problem that in these same areas, while the mottling, or fluorosis, was observed, there was less dental caries, or tooth decay, as compared to areas where the public water supplies were fluorine-free, particularly among children under the age of approximately twelve. This age group, approximately 10 or 12% of the population, was used in the studies because of their availability and accessibility in the schools. As a result, the theory that controlled fluoridation, that is, the concentration of approximately 1 PPM, was effective in reducing the incidence of dental caries, or tooth decay, among children during the periods of dentition, both deciduous and permanent teeth, while avoiding any toxic effects otherwise, has received widespread acceptance among many scientific observers.

The accumulated evidence does indicate that fluorine in public water supplies reduces the incidence of tooth decay. The real difference of opinion among the experts is whether sufficient evidence has been obtained to prove that the fluorine ion in public water supplies, which the entire population is required to ingest, particularly when artificially or mechanically added, may not have a cumulative toxic effect, particularly upon the aged, the ill, and those suffering from chronic physical ailments, etc. Test programs in laboratory and field have been under way and are still in progress on this question. The proponents of fluoridation assert that there is already sufficient evidence to demonstrate that controlled fluoridation is not harmful in any respect to the rest of the population. They point

to population surveys which have been made in the areas where naturally fluoridated water has been ingested for many years. These surveys, they say, reveal no greater incidence of the other diseases common to humanity in those areas than in the areas where water is fluorine-free. The opponents say these surveys are as yet inconclusive and unacceptable. Let the scientists and the lapse of time resolve the question. We are not qualified to decide that controversy. Fortunately, it is not necessary to a decision in this case. We only refer to it here because we think it is relevant to what we conceive to be the basic issue of fact as well as law in the instant suit.

The evidence establishes that fluoridation will not cure dental caries nor prevent it entirely, even in the young age group which it is designed particularly to serve. Dental caries, or tooth decay, exists in the naturally fluoridated areas as well as the areas which have artificially fluoridated water supplies, even among the children below twelve years of age. Fluoridation, therefore, is not a specific, such as smallpox vaccine is for smallpox. All that is claimed for fluoridation is that there will be less dental caries with fluoridated water than with water that is fluorine-free.

What is dental caries, or tooth decay? It is classified by the scientists as a disease. It is widespread and prevalent, not only in most of the United States, but also in the area of Shreveport. Its cause is as yet unknown. The evidence indicates that the most generally accepted scientific theory on the subject is that tooth decay is the result of the enzymatic action of one or more bacterial organisms in or around the teeth. There is no known cure.

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The only available treatment is the removal of the affected area followed by filling with appropriate material. With these facts in mind, the next question naturally arises as to how the placing of fluorine in water is thought to combat tooth decay. In other words, what is the process of its action following ingestion? And this is important, we think, in a proper determination of the legal issue in this case. We have noted two theories advanced out of the mass of scientific evidence in this case. One is that, as a result of drinking fluoridated water, some of the fluorine ions are deposited or stored in the dental tissues or teeth and that they serve as inhibitors of the destructive actions of the bacteria which are thought to cause the decay of the teeth. The other theory is that the drinking of fluoridated water "changes the flora of the mouth," which we suppose means that the fluorine ion in the water that is drunk perhaps serves to destroy in the mouth some of the bacteria which, if left uninhibited, would eventually attack the teeth. Under either theory it is our appreciation of the evidence that the purpose of fluoridation is to accomplish the application of the fluorine ion to the teeth and the dental area by external contact in the mouth or as a result of body metabolism and that the drinking water is merely the vehicle by which that is accomplished. In other words, it is either the direct or indirect application to the teeth and the dental area of the fluorine ion, or perhaps both. Indeed, a number of the scientists whose opinions appear in the record expressed the opinion that the direct application (they call it topical application) of the fluorine ion to the teeth and dental tissues accomplishes the same result as is claimed for fluoridated drinking water, except that they do not claim quite as high a per-

centage of reduction in the incidence of tooth decay as is claimed by the advocates of fluoridation. There is evidence in the record that there are other elements besides fluorine which have demonstrated a capacity to combat tooth decay similar to that of fluorine, and without any toxic effect otherwise. Again, these are conflicting theories which we are not called upon here to resolve.

The point is that these scientific facts convince us that the process of fluoridating a public water supply is in actuality a method of treatment by fluoridating the dental areas and tissues of the individual who drinks the water. The plaintiffs in this case call this mass medication. Defendant's counsel deplores the use of this terminology and say that it is in no sense medication. But we think defendant's counsel give too narrow an interpretation to the words. They would restrict the meaning of medication to a therapeutic or curative process; and, since they correctly point out that fluoridation is not designed to and cannot cure the disease of dental caries, it cannot be medication. But medication, in lay understanding, includes prophylaxis or preventive measures, when applied to the individual. Even dietary regimes prescribed by the doctor of medicine is, in this sense, medication. Considering the end results that are sought, we cannot escape the conclusion that it is a form of medication or at least a scientific treatment or a sort of hydro-therapy, by way of ingesting these mineralized waters, of and for the children of the community under twelve years of age. And the entire balance of the population will be forced to take it, whether they want it or not, unless, as suggested in one argument, they obtain and use some other kind of water.

Before leaving the evidence pertaining to the nature and purpose of the fluoridation process we observe in the opinions of some of the experts statements that fluoridation is merely a process of adjusting the mineral content of the water so as to supply and relieve a mineral deficiency. The implication here is a theory that the absence of fluorine from drinking water is a nutritional deficiency. But in our opinion the evidence in the case falls far short of demonstrating that fluorine is an indispensable element in the growth and development of dental tissue.

Another aspect of the disease of dental caries which is established by the scientific evidence is that it is non-contagious and non-communicable. In short, it cannot be transmitted from one person to another. No person or segment of the population having decayed teeth can, on that count, have any effect upon the dental health of the general public or of any other member or segment thereof.

In the light of this review of the facts, let us turn to the legal aspects of this case. First, let it be noted that this is a case of first impression in Louisiana. No appellate court nor, as far as we know or have been informed, any other court in this state, has ever been called upon to consider this specific question. We, therefore, have no binding precedent to guide us here, but must rely upon our own judgment of the issue.

The basic and, to our mind, the decisive issue in this case, is plaintiffs' contention that the City Council has no delegated authority to fluoridate the City water supply. It is unnecessary to lengthen this opinion by citation of authorities for the proposition that a municipal

government, being the creature and a subdivision of the State, derives its just and lawful powers from the State, and may exercise its delegated powers only for the purposes of the delegation. Such delegation may be either express or implied from the language and the nature of the delegation. We have already pointed out orally at an early stage of this litigation that the City clearly has been delegated the express power to acquire, maintain and operate a City water supply and the plenary power to take all necessary action to protect the same from pollution and damage. We quote subsections (m) and (u) of Section 2.03, Chapter 2, of the City's Charter:

> "(m) To acquire amicably or by expropriation, construct, own, maintain and operate, within and without the city, water works, gas plants and electric plants, with the pipe and transmission lines incident thereto, for the purpose of supplying water, gas and electricity within and without the city, to charge and collect compensation therefor, and to provide penalties for the unauthorized use thereof, provided that no such plant shall be acquired except with the approval of a majority of the electors of the city voting thereon at an election called for the purpose, and provided that no water shall be sold to any other municipality except in accordance with the general laws of the state."

> "(u) To make all necessary regulations to protect the water supply of the city from pollution and other damage, and to exercise full and unlimited police power over the bed and waters of Cross Lake and for a distance of five thousand feet from the

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> meander contour line which extends to the one hundred and seventy-two foot mean gulf level line as well as over the streams and tributaries of said lake for the same distance, and to pass any and all rules, regulations and ordinances deemed to be necessary for these purposes; and the city shall have the right and authority through its board of health, public safety department, public utilities department or otherwise, to inspect all of said property and the darinage area of said Cross Lake, and to enforce its ordinances and regulations by fine or imprisonment through the proper courts of the state."

In our mind it is not reasonable to hold that these specific delegations include by implication the authority to fluoridate the City water supply to combat dental caries in a segment of the population, for we observe no reasonable relation between the two. Indeed, the very language expresses the purpose of the delegations to be "for the purpose of supplying water within and without the city" and "to protect the water supply of the city from pollution and other damage." We know of no other specific provisions, nor have we been referred to any, contained in any other statute or constitutional provision of this state, conferring any more specific authority than that contained in the above-quoted sections.

But defendant contends that, under its police power to protect and promote the public health, it acted within its authority in taking the proposed action. It cites the sweeping provisions of Section 2.01 of its Charter, to-wit:

"Section 2.01. General Powers. The City of Shreveport shall have and may exercise all the powers, rights, privileges and immunities which are now or may hereafter be or could be conferred upon cities of its population class by the constitution and general laws of the state; all powers, rights, privileges and immunities heretofore conferred on said city by any special act and not inconsistent with this plan of government; and all other powers pertinent to the government of a city the exercise of which is not expressly prohibited by the constitution of the state and which, in the opinion of the council, are necessary or desirable to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this plan of government, and no enumeration of particular powers in this plan of government shall be taken to be exclusive but shall be held to be in addition to this general grant of power."

This impressive language is no more than the usual delegation of the police power and is to be so interpreted. To hold otherwise would be to introduce a new concept that the police power of government is unlimited. It is not to be considered that the redactors of this charter provision or the people who adopted it had any such purpose or intent. It would require libraries to contain the works of text writers and judges dealing with police power. We shall refrain from adding another volume for, after all,

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the principle is not the subject of controversy and may be tersely stated.

Concerning the exercise of the police power in the domain of the public health, it is settled law that a municipality through its governing authority may take any action it may determine to be necessary and expedient, provided (1) the object of such action bears a reasonable relation to the public health, and provided (2) the means employed be not arbitrary, unreasonable, oppressive, or violative of the constitutional guaranties of the citizens. If this test be met the municipality's action is not subject to the control of the courts. Whether the means employed be good or bad, wise or unwise, is not the concern of the judiciary. But it is the duty of the courts to decide, when such governmental action is challenged, whether the purpose and object of such action bear a reasonable relation to the public health and whether the method resorted to to accomplish the object be arbitrary, unreasonable, or invasive of constitutional guaranties. In so deciding the courts look beyond the declared objective to ascertain whether it is in fact what the governing body has declared it to be and the court must be governed by the facts of each particular case. This is not a curtailment by the courts of the just powers of another branch of the government, but is merely a judicial determination of whether or not the governmental agency has strayed beyond the boundaries of the domain wherein it may, without judicial restraint, exercise its just powers.

We need only consider the first condition precedent to the valid exercise of police power indicated above. Under the facts of this case as we understand and have stated

them, it is our opinion that fluoridating the City water supply bears no reasonable relation to the public health. It is worthy of note that the only specific reference to disease in the City Charter (Section 2.04 (u) of Chapter 2) is contained in the following language:

> "To make regulations not in conflict with the laws of the state, for the maintenance of cleanliness and sanitary conditions within the city, and to prevent the introduction and spread of contagious diseases; . . ."

Certainly it is not here suggested that the foregoing language delineates the boundaries of the domain of public health, for many subject matters not comprended in the named categories have been held by the courts to be within that domain and, therefore, subject to regulation and control by the valid exercise of the police power. But all such are and have been "public" in their import, rather than being matters of personal health and hygiene.

We advert to the scientific evidence concerning the nature and cause of dental caries, or tooth decay. It is not contagious and cannot be transmitted from one person to another. No person or segment of the population having that condition can, on that account, have any adverse effect on the health, dental or otherwise, of the general public or any member or segment thereof. We repeat, in our opinion this is not a matter of the public health. It is strictly within the realm of individual and personal dental health and hygiene within which each person should be free to choose his course for himself and those for whom he is responsible in the family relation. To this field the just powers of the government do not extend.

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The suggestion that the fluoridation of the City water supply can be legally justified as a measure bearing a reasonable relation to the general welfare is even more tenuous than the contention that it is within the domain of the public health. For the reasons we have heretofore stated. We think this contention is without merit.

The views we have expressed make it unnecessary to discuss or pass upon the other questions raised.

Accordingly, there will be judgment ordering a preliminary writ of injunction to issue herein, prohibiting the defendant from proceeding further to fluoridate the City water supply.

/S/ James U. Galloway
J u d g e.

APPENDIX B.

MONDAY MAY 31, 1954

Supreme Court of Louisiana

No. 41,717

Marke E. Chapman et al.

versus

City of Shreveport

Appeal from the First Judicial District Court, Parish of Caddo; the Honorable James U. Galloway, Judge.

HAWTHORNE, J.

This is an appeal by the City of Shreveport from a judgment enjoining it from fluoridating the municipal water supply. The City of Shreveport owns and operates its own municipal waterworks plant and other facilities for the sale and distribution of water for consumption and other uses of the inhabitants of that city. On October 16, 1953, the Shreveport city council adopted a resolution authorizing the commissioner of public utilities to proceed with the advertising and calling for bids for the necessary equipment to fluoridate the city water supply in accordance with the best plans now available and to receive these bids on or before October 27. The initial amount which the city proposes to spend in order to fluoridate the water supply is shown by the record to be in excess of $10,000.00 and the annual operating expense approximately $21,000.00.

The plaintiffs, as residents, citizens, taxpayers, and purchasers of water from the city, instituted this suit

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seeking a preliminary writ of injunction to prevent the proposed fluoridation of the public water supply and the expenditure of these public funds for such purpose. After trial in the lower court a preliminary injunction issued enjoining, restraining, and prohibiting the City of Shreveport from proceeding further to fluoridate the water supply of that city. From that judgment the city was granted a devolutive appeal to this court.

As we appreciate and understand the trial judge's written opinion, he granted a preliminary injunction in the instant case because in his opinion the charter of the City of Shreveport delegated no authority, express or implied, to the city to fluoridate its water supply, and the city did not have this power or right under its police power in the domain of public health. In the course of his reasons for judgment he recognized the well settled principle of law that a municipal authority may take any action it may determine to be necessary and expedient under its police power in the domain of public health, provided the purpose and object of such action bears a reasonable relation to the public health and provided the means employed is not arbitrary, unreasonable, oppressive, or violative of the constitutional guarantees of the citizens. He concluded, however, that under the facts of the instant case the fluoridation of the city water supply bears no reasonable relation to the public health or that it is not a matter of public health but is strictly within the realm of private dental health and hygiene, in which each person should be free to choose his course for himself and those for whom he is responsible in the family relationship.

For the primary *purpose of reducing tooth decay in children 12 years of age and under*, the City of Shreveport proposes to add to the water furnished by it for the use and consumption of its citizens sodium fluoride in the proportion of one part per million. In furtherance of this purpose the resolution authorizing the calling for bids for the necessary equipment for fluoridation was adopted by the city council at the request of the Council of Dental Health of the Louisiana State Dental Society, the Council of Dental Health of the Fourth District Dental Association, the Shreveport Medical Society, and the City Board of Health of Shreveport, all of which advocated and approved the fluoridation of the city's water supply.

The relationship between the fluoride content of water supplies and dental caries has been the subject for some years of extensive scientific study, research, and experiments, and as a result of this research the court in the instant case has the benefit of facts ascertained, studies made, and opinions formed by many leading and prominent American dentists, physicians, surgeons, scientists, health and dental associations and organizations, whose statements have been filed in evidence, on the advisability of the fluoridation of water for human consumption. In sum, these statements disclose the following pertinent facts:

Dental caries, or tooth decay, is a pandemic disease, affecting most of our population both adults and children. Fluorides in varying proportions from less than one to 14 parts per million exist naturally in the water supplies of many regions of this country, and it has been demonstrated by studies made in many sections throughout the United States that in communities where the water supply con-

tains no fluoride tooth decay among children is approximately three times greater than it is among children living in communities where the water supply contains one part of fluoride per million parts of water or more. In these studies other factors of diet and other mineral components of water were considered, but it was found that only the fluoride content of the water consumed bore direct relationship to consistent protection from dental caries. This preventive effect of fluorides on tooth decay was found to be most efficient during the period when the dentine and enamel of the permanent dentition are being formed, which is the period from birth to about the twelfth year, but it was shown that the protection afforded against dental caries in this formative period continues well into adult life, even into the middle 30's and 40's. Studies were made of the effect on tooth decay when fluorides were artificially added to municipal water supplies, and it was found that the fluorides artificially added had the same preventive effect on caries as did the fluorides naturally existing in water.

By November 6, 1953, more than 840 communities, with a total population of 15,578,300, were using water supplies which had been artificially fluoridated in concentrations from 0.7 to 1.5 parts per million. By 1951, after five or six years of the fluoridation of the water supplies in certain cities, studies and examinations were made of the teeth of school children in these cities (and also, for comparison, of those of the children in cities where the water supply contained no fluorides), and the finding reported was that there has been a reduction of from 50 per cent to 65 per cent of decay in permanent teeth in children in the cities where fluorides had been added

artificially to the water. As a result of these studies and experiments the United States Public Health Service, the National Institute of Health, the American Dental Association, and numerous other national organizations recommended the fluoridation of municipal water supplies as a desirable and effective health measure.

The City of Shreveport proposes to use the recommended concentration of one part per million, and this concentration has not been reported to produce any adverse physiological effect. Vital statistics and reports of physicians from communities where water containing one part per million or over is consumed have shown uniformly no undesirable effects on birth or death rates or on invalids, elderly or sick individuals, or any other persons.

The addition of fluorides to the water supply does not affect the color, odor, or taste of the water. The same kind of procedure which has long been used to feed chlorine and other chemicals into the water supply is used to introduce fluorides into the water, and there is no question that fluorides can thus be added to the water without danger of physical over-feeding or any mechanical breakdown which would produce a toxic effect.

The charter of the City of Shreveport, which was written under the authority of a 1948 amendment to Article 14, Section 37, of the Constitution and approved by a vote of the citizens of that community in 1950, confers upon that city the power to adopt such measures as are necessary in the opinion of the council to promote the general welfare of the inhabitants of that city in Section 2.01 of the charter:

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"General Powers. The City of Shreveport shall have and may exercise all the powers, rights, and privileges and immunities which are now or may hereafter be or could be conferred upon either of its population class by the constitution and general laws of the state; all powers, rights, privileges and immunities heretofore conferred on said city by any special act and not inconsistent with this plan of government; and all other powers pertinent to the government of the city the exercise of which is not expressly prohibited by the constitution of the state and which, in the opinion of the council, are necesary or desirable to *promote the general welfare of the city* and the safety, *health*, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this plan of government, and no enumeration of particular powers in this plan of government shall be taken to be exclusive but shall be held to be in addition to this general grant of power." (Italics ours)

Accordingly, if fluoridation of the water supply bears any reasonable relation to the public health, it can be undertaken by the city under the express provisions of this action of its charter. Moreover, it is well settled that courts will not interfere with the legislative authority in the exercise of its police power unless it is plain and palpable that such action has no real or substantive relation to the public health or safety or general welfare. City of Shreveport v. Conrad, 212 La. 737, 33 So. (2d) 503; City of Shreveport v. Bayse et al, 166 La. 689, 117 So. 775. There also exists a presumption that an ordinance adopted under the police power of the state is valid, and the burden

of proving the contrary is on him who asserts the invalidity or nullity. City of New Orleans v. Beck, 139 La. 595, 71 So. 883; Ward et al v. Leche et al, 189 La. 113, 179 So. 52; State v. Saia, 212 La. 868, 33 So. (2d) 665; State v. Rones, 223 La. 839, 67 So. (2d) 99.

Although the immediate purpose of the proposed fluoridation is to retard and decrease the disease of dental caries in young children, the protection thus given will continue well into adult life. Not only will the proposed fluoridation retard and reduce this disease in the generation of children presently in Shreveport, but its effect will continue into their adult life, and consequently the proposed measure will ultimately be beneficial to all the residents of the city.

The health of the children of a community is of vital interest and of great importance to all the inhabitants of the community. Their health and physical well-being is of great concern to all the people, and any legislation to retard or reduce disease in their midst cannot and should not be opposed on the ground that it has no reasonable relation to the general health and welfare. Children of today are adult citizens of tomorrow, upon whose shoulders will fall the responsibilities and duties of maintaining our government and society. Any legislation, therefore, which will better equip them, by retarding or reducing the prevalance of disease, is of great importance and beneficial to all citizens. In our opinion the legislation does bear a reasonable relation to public health.

The appellees insist, and the district judge concluded, that fluoridation of the water to prevent tooth

decay is not a matter of public health, but a matter of private health and hygiene. The evidence in this record refutes overwhelmingly this conclusion. Dental caries is one of the most serious health problems in the City of Shreveport, and in the nation as well. The fact that it is not a communicable disease and one that can cause an epidemic does not detract from its seriousness as affecting the health and well-being of the community. The plan for fluoridation, therefore, bears a reasonable relation to the general welfare and the general health of the community, and is a valid exercise of the power conferred by Section 2.01 of the charter if it is not arbitrary or unreasonable.

The appellees contend that fluoridation of the water supply is arbitrary and unreasonable because it *may* cause serious ill effects to the adult, aged, and ill; that it is arbitrary to fluoridate the water until clinical tests have proved that these serious effects will not result. The appellees have failed completely to prove that fluoridation would be harmful to the aged and ill.

There is expert opinion of respectable medical authority that fluorides added to water will have no more harmful effect than fluorides naturally appearing in water, and that in those places where fluorides naturally appear no ill effects have been experienced by the aged or ill of the population. In those placed where tests have been conducted no ill effects have been shown. It cannot be said, then, that the City of Shreveport is acting arbitrarily from this point of view.

Appellees contend that it is arbitrary and unreasonable to compel a person to submit to the taking of pre-

ventive medicine except for the purpose of controlling the spread of contagious or infectious diseases. Their argument is not entirely appropriate to the instant case. In the first place there is no direct complusion on anyone to drink the water. The compulsion at most is an indirect one, but it cannot be questioned, of course, that the fluoridation is undertaken with the view that the citizens or a large majority of them will receive its benefits by drinking the public water. The witnesses from the dental profession considered that the addition of fluoride to the water was not medicating it in the generally accepted sense, but was adding to it one of the mineral properties found naturally in water in some sections of the country.

Appellees next argue that it is unreasonable to fluoridate the water when it will reduce the incidence of disease only among a limited class. A health measure is not necessarily arbitrary because it affects primarily one class. It may, even so, be in the interest of the public generally. Ultimately, of course, the fluoridation will benefit the whole population because the retarding of decay extends into adult life of the child who has had the benefit of water containing fluorides. It has long been recognized that a police measure is not objectionable because it does not extend to all classes. In Zucht v. King et al, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194, it was said:

"* * * A long line of decisions by this court * * * (has) settled that in the exercise of the police power reasonable classification may be freely applied and that regulation is not violative of the equal protection clause merely because it is not all-embracing. * * *" See also West Coast Hotel Co. v. Parrish et al, 300 U.S. 379, 57 S. Ct. 578, 81

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L. Ed. 703; Sturges & Barr Manufacturing Company v. Beauchamp, 231 U.S. 320, 34 S. Ct. 60, 58 L. Ed. 245.

There is no merit in appellees' argument that, if the city charter grants to the city council of Shreveport authority to fluoridate its water supply, such action to that extent is a violation of the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment does not deprive a state or its subdivisions of the right to preserve order or to protect the health of the people under its police power, and in the exercise of its power the legislative branch may interfere with and impair the individual liberty of the citizens in a manner and to an extent reasonably necessary for the public interest, and the courts will not interfere except where the measures invade fundamental rights or are arbitrary, oppressive, or unreasonable. This is not a proper case for judicial interference. See Cooley on Constitutional Law (4th ed.), p. 289; 2 Cooley's Constitutional Limitations (8th ed.), pp. 1223 et seq.; Jacobson v. Massachusetts, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643; State v. McCormick, 142 La. 580, 77 So. 288.

For the reasons assigned, the judgment of the district court is reversed and set aside, and plaintiffs' suit is dismissed at their costs.

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS.

Appellants

versus

CITY OF SHREVEPORT

Appellee

BRIEF OPPOSING MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS

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LECOMTE, SHREVEPORT, LOUISIANA

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS.

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CITY OF SHREVEPORT

Appellee

BRIEF OPPOSING MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS

May it Please the Court:

In the motion filed by the City of Shreveport it takes the position that the questions raised in this appeal are not substantial. In reply we point out that the Supreme Court of Louisiana has validated an entire new species of "health measure" and that the encyclopedias of law may be searched in vain in an effort to find any legal support for the action proposed by this defendant. There is no question but that a State or subdivisions thereof have plenary power to combat the introduction and spread of contagious or infectious diseases. But here

it is said that this power gives the sovereign the right to use a public water supply as a vehicle to medicate the people for the purpose of "reducing the incidence" of a non-contagious disease. This concept of the power of the sovereign is not only novel in law but is highly dangerous because under it any chemical, drug or medicine may be administered to an entire people whenever, in the opinion of the sovereign, such action is desirable.

The appellee attempts to distinguish this case from *Jacobson v. Massachusetts*, 197 U.S. 11, by pointing out that there was compulsion in the vaccination law there involved, whereas, as the Supreme Court of Louisiana said, there would be no compulsion on these plaintiffs to drink this medicated water. We are sure that Your Honors will recognize the practical aspects of this case. The vast majority of citizens in a community will and must, use the communal water supply. The defendant City admits that its only reason for desiring to impregnate the water with this drug is to cause people to drink it and thereby secure an alleged benefit. If the people to any considerable extent refrain from drinking the water the result desired by the appellee would not be secured.

We argued in the Supreme Court of Louisiana and repeat our argument here that Your Honors in the *Jacobson* case maintained the right of the sovereign to medicate the people solely by reason of the contagious character of the disease and the grave and imminent danger to the general public which existed. In this case there is no

"pressure of great dangers" and no danger to the general public as distinguished from the individual. As the Louisiana District Judge pointed out the question is not one of the public health but of individual health and hygiene. This is true because no citizen afflicted with dental caries can communicate it to another citizen or to the public.

The Supreme Court of Louisiana held that the Fourteenth Amendment does not deprive a State of the right to interfere with individual liberty where the public interest, health and general welfare is involved. We point out that Your Honors have recently held otherwise.

We suggest that the questions raised by this appeal, far from being unsubstantial, present for decision fundamental and far reaching questions of Constitutional law which bear upon the health and welfare of all of the citizens of the United States. We believe that the motion to affirm and alternatively to dismiss, should be denied.

Respectfully submitted,

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MRS. RUTH MUIRHEAD,
SAM JONES SMITH,

By their Attorneys,

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IN THE

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OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS
Plaintiffs-Appellants

V.

CITY OF SHREVEPORT
Defendant-Appellee

Appeal from the Supreme Court of Louisiana

MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS WITH SUPPORTING BRIEF BY DEFENDANT-APPELLEE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS

Appellants

versus

CITY OF SHREVEPORT

Appellee.

MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS

Appellee pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States moves that the final judgment and decree of the Supreme Court of Louisiana be affirmed and in the alternative that the appeal herein be dismissed on the ground that the question presented is so unsubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and decree entered on May 31, 1954 by the Supreme Court of Louisiana dismissing the Appellants suit at their costs

and reversing a judgment of the District Court of Caddo Parish, Louisiana, which granted an injunction at the instance of the Plaintiff-Appellants restraining the City of Shreveport from inserting organic sodium fluoride in the public water supply of said city for the purpose of promoting the dental health of the city and preventing dental caries or decay in the teeth of children. The decision of the Supreme Court of Louisiana is reported in 74 So. 2d, 142 (Advance Sheets September 16, 1954) and a copy of the opinion is attached to the Appellants' jurisdictional statement.

The City of Shreveport owns and operates a municipal water works plant and other facilities for the distribution and sale of water for individual consumption. The Plaintiffs are taxpayers and water consumers in the said city.

The City Council of the City of Shreveport on October 13, 1953 adopted Resolution No. 262 of 1953 authorizing the Commissioner of Public Utilities to proceed with a calling for bids on the necessary equipment for the fluoridation of the city water supply. The resolution recites that this action was taken pursuant to the request of the Council of Dental Health of the Louisiana State Dental Society, the Council of Dental Health of the 4th District Dental Association, the Shreveport Medical Society and the City Board of Health of Shreveport, all of which organizations advocate, favor and approve and petition the city to take this action. The primary purpose of adding fluorides to the water supply is to

reduce dental decay in children's teeth in the City of Shreveport.

Appellants attacked the validity of the act of the city on the ground that no authority therefor had been lawfully delegated to the City Council, and that if such power has been granted to the city, the exercise of such power would infringe upon Plaintiffs' constitutional rights in violation of the Fourteenth Amendment of the Constitution of the United States. The District Judge held that the City Council had no authority to take the proposed action and accordingly ordered that preliminary writ of injunction issue prohibiting the Defendant from proceeding to fluoridate its water supply. The Supreme Court of Louisiana reversed the decision of the Lower Court and dismissed Plaintiffs' suit holding that the City had express authority to take the proposed action and that the exercise of such authority would violate no constitutional rights of the Plaintiffs. Plaintiffs have accordingly appealed to this Court.

ARGUMENT

The decision of the Supreme Court of Louisiana is correct and is supported by the decisions of this Court so that the questions raised on appeal are unsubstantial and warrant no further argument in this Court.

The findings of facts and conclusions set forth in the opinion of the Supreme Court of Louisiana clearly show that the Appellee was acting within the police power expressly conferred upon it in its Charter and

that the action taken by the City was for the purpose of protecting the health of the people and promoting the public welfare in a manner and to an extent reasonably necessary for the public interest. The records show and the Supreme Court opinion shows that dental caries among children and tooth decay among adults is one of the most prevalent diseases affecting the human body and that the injection of sodium fluoride into the public drinking water to the extent proposed by the City will in a large measure alleviate this disease which is widespread in the City of Shreveport, without any harmful effects upon anyone who drinks such water; that fluorides are minerals which exist naturally in the water supply of many communities throughout the United States and in many foods consumed by human beings. At the present time fluorides are being added to the public water supplies in practically every state in the Union and in the District of Columbia. Vital statistics from communities in the United States consuming water containing one part of fluoride per million parts of water and reports from physicians in these communities have indicated unformly, and without exception, no undesirable effects on birthrate, death rate, elderly or sick individuals or any other persons. As a result of these facts and of various studies and experiments on the subject, the fluoridation of public water supplies has been approved and recommended by the United States Public Health Service, National Institution of Health, American Dental Association, American

Medical Association, American Public Health Association, Association of State and Territorial Health Officers and numerous other national and state scientific organizations.

Appellants on Page 3 of their Jurisdictional Statement cite five decisions of this Court which they contend will support the jurisdiction in this case. None of these case are directly applicable except the case of *Jacobson v. Massachusetts*, 197 U. S. 11, 49 L. Ed. 643. In this case Jacobson was convicted for refusing to submit to compulsory smallpox vaccination as required by the laws of Massachusetts. An appeal was taken to this Court on the ground that the statutes of the State of Massachusetts deprived him of his liberty without due process of law and denied him equal protection of the laws in violation of the Fourteenth Amendment. This Court sustained the conviction and held that the state was acting under its police power — a power which it did not surrender in becoming a member of the Union under the Constitution; that the State Statute was enacted to protect the public health and the public safety of the people of Massachusetts and that the Appellant's right to liberty was subject to such action by the State in order to secure the general comfort, health and prosperity of its citizens. This Court further held that the safety and health of the people of the State are in the first instance for that commonwealth to guard and protect and are matters that do not necessarily concern the national government.

It will be noted that in the Jacobson case there was a direct compulsion upon all citizens of the state to

submit their bodies to medical vaccination for the purpose of preventing a widespread disease. In the instant case the Supreme Court of Louisiana has pointed out that there is no direct compulsion on the Plaintiffs or any one else to drink the water which is offered by the City of Shreveport for sale. Plaintiffs, if they desire, may use the public water supply for washing, cooking, bathing, sprinkling and other general purposes. They can easily secure drinking water from private bottling concerns which offer it for sale in the City of Shreveport. There is no evidence in the record to show that Plaintiffs and Appellants would be greatly inconvenienced by securing their drinking water elsewhere or by other means.

The City of Shreveport in the management and operation of its municipally owned water works is acting in a proprietory rather than a governmenal capacity. It is therefore subject to the same duties and responsibilities and possesses the same rights and privileges as individuals and private corporations enjoy in such business.[1] When the Legislature confers upon a municipal corporation the right and power to own, maintain and operate water works facilities for the purpose of supplying water and making charges therefor, the manner and extent of the exercise of such power is, in the absence of the abuse

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1. Solomon v. City of New Orleans, 156 La. 629, 101 So. 1, Baton Rouge Water Works v. La. Pub. Serv. Com., 156 100 So. 710. Oliphant v. Lake Providence, 193 La. 675, 192 So. 95.

thereof, entirely within the discretion of the municipal authorities.[2] The City is not obliged to furnish water to its inhabitants for drinking purposes and, if it does it can do so under its own terms and conditions. Any consumer or prospective consumer who desires the privilege of purchasing the water may contract for his supply or not, as he may choose. There is, therefore, no compulsion upon the City to furnish any particular kind of water to the Plaintiffs and Appellants and there is no obligation on them to buy their water from the City.

From what has been said above it is perfectly clear that the "privileges and immunities" for which the Appellants seek protection from this Court under the Fourteenth Amendment are not their privileges and immunities as citizens of the United States, but are privileges and immunities which belong to them as citizens of the City of Shreveport and the State of Louisiana. Their privilege to purchase their drinking water from the public supply comes from the City of Shreveport and not from the Government of the United States. This case is accordingly parallel with that of *Hamilton v. Regents of the University of California*, 293 U. S. 245, 79 L. Ed. 343. In that case Plaintiffs who were students of the University of California refused to take courses in compulsory military training on the ground of their

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2. Connery v. Water Works Co., 42 La. Ann. 188, 7 So. 559.
Ice, Light and Water Works Co. v. Lake Charles, 106 La. 65, 69, 72, 30 So. 289.
Brennan et al v. Water & Sewerage Board, 108 La. 569, 583, 32 So. 563.
Parker v. Mayor of Monroe, 128 La. 591, 55 So. 587.

religious beliefs and conscientious objections to war, preparation for war and military education, and contended that the requirements of the University violated the Fourteenth Amendment. This Court held that the Fourteenth Amendment, as a safeguard of "liberty", conferred on these Plaintiffs no right to be free from the obligation to take military training, as one of the conditions of attendance.

This Court has heretofore had occasion to consider the exact questions presented in the present appeal. In the case of *C. Leon De Aryan v. John D. Butler, Mayor of the City of San Diego, et al*, 119 C.A. 2d 674, 260 P. 2d 98, Plaintiff sought to enjoin the City of San Diego from adding sodium fluoride to its public water supply for the purpose of preventing dental caries in children on the ground that such action was violative of the Plaintiff's religious beliefs against the taking of medicine and deprived the Plaintiff of his liberty under the Fourteenth Amendment. The State Courts of California denied Plaintiff's claim and thereupon he sought relief by certiorari from this Court. On June 7, 1954, this Court denied Plaintiff's petition for Writs of Certiorari. See No. 651 on the Docket of this Court. The action of this Court is reported in 98 L. Ed. 727 (Advance Sheets June 21, 1954).

Other State Courts in addition to the Courts of California and Louisiana have sustained the rights of municipalitites to fluoridate their public water supply and have held that such action violates no rights guaranteed

to water consumers by the Fourteenth Amendment to the Constitution.[3]

Appellee, therefore, respectfully submits that the Appellants present no substantial question for the decision of this Court, and that the judgment and decree of the Supreme Court of Louisiana should be affirmed. In the alternative, Appellee submits that this appeal should be dismissed.

Respectfully submitted,

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3. See Kraus v. City of Cleveland (Ohio Court of Common Pleas) 116 N.E. 2d 779.
Dowell v. City of Tulsa (Okla.) 273 P. 2d 859 (Advance Sheets October 1, 1954).

CERTIFICATE

I hereby certify that a copy of the above and foregoing motion and supporting brief has been served on opposing counsel by depositing the same in a United States Post Office or Mailbox with first class postage prepaid addressed to counsel of record, Robert G. Chandler, at his post office address, 918 Commercial Building, Shreveport, Louisiana, and to Otis W. Bullock, 506 Commercial Building, Shreveport, Louisiana.

This 29th day of October, 1954.

.....

W. SCOTT WILKINSON
Of Counsel for Appellee.

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No. 407. CHAPMAN ET AL. *v.* CITY OF SHREVEPORT. Appeal from the Supreme Court of Louisiana. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. *Otis W. Bullock* for appellants. *J. N. Marcantel* and *W. Scott Wilkinson* for appellee. Reported below: 225 La. 859, 74 So. 2d 142.

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